

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**JAMES W. WELLS, Appellant**

**and**

**U.S. POSTAL SERVICE, SEATTLE BULK  
MAIL CENTER, Federal Way, WA, Employer**

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**Docket No. 04-788**

**Issued: June 10, 2004**

*Appearances:*

*James W. Wells, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On February 3, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated February 21 and August 4, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue on appeal is whether appellant has met his burden in establishing that he sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On December 9, 2002 appellant, then a 44-year-old tractor trailer operator, filed an occupational disease claim alleging that he sustained low back pain on the right side radiating down the right leg while driving a semi truck during his federal employment. Appellant stated: "[T]he driver's seat was seriously hurting my back. The company put in a new seat. The new seat was worse. Too narrow which started to cause pain down my right hip to my right ankle. Since then the pain was tripled to the point where I can hardly walk on the right leg...."

Appellant asserted that he first became aware of the condition and that it was caused or aggravated by his employment on November 8, 2002. Appellant stopped working on December 4, 2002.

In a letter dated December 30, 2002, the Office requested additional information from appellant within 30 days including a description of how the claimed condition developed, including the symptoms experienced, when he first noticed the condition, all previous similar conditions sustained and whether or not the claimed condition was intermittent or continuous. The Office further requested a comprehensive medical report from his treating physician which described his symptoms, results of examinations and tests, diagnosis, the treatment provided and the physician's opinion with medical reasons on the cause of the condition.

In response to the Office letter, appellant submitted a statement in which he discussed the claimed work-related back injury of November 2002 and his medical treatment. He also submitted evidence including a December 12, 2002 medical report from Dr. Virgil Becker, Jr., a Board-certified orthopedic surgeon, which indicated that he was treated for back and right leg pain. He indicated that appellant had a previous decompression performed on the right-sided L4-5 level on October 17, 1990 and had episodic flare-ups since that time. Dr. Becker further stated:

“The patient reports that he still is driving truck. He was using a seat that had a broken lumbar support. It was replaced with a second seat that was very narrow and quite uncomfortable. He started having more pain to his back as well as to his right leg. This was replaced, but he had a continued gradual increase in pain to his back as well as his right leg. His right leg became more involved. The pain didn't go away and persisted.”

Dr. Becker also reviewed a magnetic resonance imaging (MRI) scan from December 10, 2002 and diagnosed recurrent disc herniation of L4-5 with symptomatic L5 nerve root impairment. In an attending physician's report from Dr. Becker dated December 20, 2002, the physician listed November 8, 2002 as the date of injury, diagnosed “recurrent HNP [herniated nucleus pulposus]” and checked yes that he believed appellant's back condition was caused or aggravated by his employment. In multiple progress reports dated from December 23, 2002 through January 13, 2003 Dr. Becker further discussed appellant's pain to his right anterior tibial region and soreness in his right leg after a revision decompression of L4-5 from December 16, 2002. Dr. Becker diagnosed postoperative revision decompression of the lumbar spine in each of the progress reports.

By decision dated February 21, 2003, the Office denied the claim on the grounds that the medical evidence did not establish a causal relationship of appellant's condition and the employment.

On March 4, 2003 appellant requested a review of the written record. In support of the request, appellant submitted progress and operative reports and resubmitted the December 12, 2002 report from Dr. Becker which diagnosed recurrent disc herniation of L4-5 with symptomatic L5 nerve root impairment. The report contained a handwritten note from the

physician dated March 3, 2003. Dr. Becker stated: “based upon the above it appears the L4-5 HNP was a result of the industrial injury as described on a more probable than not basis.”

By decision dated August 4, 2003, an Office hearing representative affirmed the prior decision finding that appellant had not submitted sufficient medical evidence establishing a causal relationship of the employment and the diagnosed condition or resultant surgery.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### **ANALYSIS**

In support of his claim that he sustained a back condition in the performance of duty, appellant submitted an attending physician’s report and progress notes from Dr. Becker, an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

attending Board-certified orthopedic surgeon. In his December 12, 2002 report, Dr. Becker noted that appellant reported increasing and persistent back and right leg pain after using an inadequate seat in his work vehicle. He indicated that appellant had a previous decompression performed on the right-sided L4-5 level on October 17, 1990 and that an MRI scan from December 10, 2002 showed a large disc extrusion of the right-sided L4-5 level with marked compression of the right L5 nerve root and minimal bulging at the L5-S1 level. He diagnosed recurrent disc herniation of L4-5 with symptomatic L5 nerve root impairment. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>5</sup> Dr. Becker did not provide any indication that appellant's back problems were due to employment factors other than relating appellant's complaints. Appellant also submitted a form report from the physician, in which he checked yes that appellant's diagnosed recurrent herniation was caused by his work activity. However, the Board has held that the checking of a box "yes" on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>6</sup> On reconsideration, appellant resubmitted the December 12, 2002 report which contained a handwritten note from Dr. Becker, which vaguely connected appellant's diagnosis to his employment. This report lacks a rationalized medical opinion to establish a causal relationship between his diagnosed back condition and the implicated employment factors. While Dr. Becker attributed appellant's condition to work factors, he did clearly identify the work factors, describe the mechanism of injury, or provide any rationale for his conclusion. An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Therefore, this report is insufficient to establish that appellant's claim for compensation is related to his work-related injury.<sup>7</sup>

For these reasons, appellant did not establish that he sustained a back or right leg condition in the performance of duty.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury causally related to his employment.

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<sup>5</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>6</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>7</sup> *Patricia J. Glenn*, 53 ECAB \_\_\_\_ (Docket No. 01-65, issued October 12, 2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 4 and February 21, 2003 are affirmed.

Issued: June 10, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member